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18 to making these investments?

19 A. Absolutely.

20 Q. Did you ever feel you have not had access to
21 information?

22 A. No, not for one second.

23 MR. RICHARDS: Thank you.

24 ARBITRATOR MEYERSON: Thank you very much.

25 MR. RICHARDS: Robert Gaudet.

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1 ARBITRATOR MEYERSON: I think we heard your name,
2 but spell your name.

3 THE WITNESS: G-a-u-d-e-t.

4 ARBITRATOR MEYERSON: And we have one golfer, and
5 I'd appreciate some tips before you leave.

6

7

8

9 ROBERT GAUDET,

10 having been first duly sworn, was examined and testified as
11 follows:

12

13 DIRECT EXAMINATION

14 BY MR. RICHARDS:

15 Q. Okay. Mr. Gaudet, could you tell the panel your
16 background and experience in golf?

17 A. Let's see. I joined the PGA in 1990, so almost
18 20 years -- 19 years' member of PGA. I've been involved in
19 approximately eight different golf projects both in Canada
20 and international, Mexico. I played two years of semipro
21 golf in Florida. So in a short brief summary that's my
22 whole history.

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23 Q. What about in developing -- overseeing the golf
24 course portion of a development?

25 A. Golf portion of a development, I've been 15 years

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1 in Cabo San Lucas. In the 15-year tenure I've been with
2 three different projects, each five years.

3 Of both of those projects -- three -- pardon
4 me -- usually it's about two, two and a half through the
5 development phases, planning, infrastructure, planning all
6 the variables to get a place ready for operations. And I
7 also spent in each of those three projects, X Diamante Del
8 Mar, because it has not gotten operations, two, three
9 years -- two and a half years typically in operations as
10 well, director of golf operations.

11 Q. And where do you currently reside?

12 A. Cabo San Lucas.

13 Q. Are you an owner of the Diamante Cabo San Lucas
14 project?

15 A. Yes.

16 Q. And presently what's the condition of the golf
17 course down there?

18 A. The golf course is currently completed. It's a
19 Davis Love, III, design. It has potential of being a very
20 significant golf course, especially, first off, to the
21 region of Baja.

22 It's got some attributes that are very unique.
23 It being in the dunes, it has a significant amount of
24 coastline.

25 It was Davis Love's kind of first venture to the

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 1 international market. He's super excited about telling the
 2 world about that golf course. He's been, unfortunately,
 3 unable to do so just for negative exposure for himself. So
 4 I know intimately that he's very excited about promoting it
 5 to the world, and quite frankly so am I.

6 Q. Assuming that the world markets come back to a
 7 regular order, what would you value the development?

8 MR. MEEKS: Objection. Lacks foundation. Just
 9 because he has an interest in an LLC doesn't mean he's
 10 qualified to value the property at all. There's been no
 11 foundation whatsoever for his ability to value that
 12 property. And if he's going to be called as an expert
 13 witness, he was never designated as an expert witness and
 14 no expert report was prepared.

15 MR. RICHARDS: It's just his lay opinion. It's
 16 right in the evidence code. Every person that's an owner
 17 of property can give a lay opinion.

18 ARBITRATOR MEYERSON: Overruled.

19 MR. RICHARDS: It's in the evidence code.

20 MR. MEEKS: He doesn't own the property. He owns
 21 an interest in an LLC, and he's merely a director of golf.
 22 He's not managing the property. This is not a situation
 23 where the evidence code would allow just a guy that's
 24 investing in a project come in and provide his opinion.

25 THE WITNESS: Sales consultant.

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1 MR. RICHARDS: This goes to weight.

2 (Arbitrators conferring.)

3 ARBITRATOR MEYERSON: Overruled.

4 You can cross-examine about that.

5 Q. BY MR. RICHARDS: You have some background in

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6 real estate down there, don't you? what is your background
7 in real estate, specifically sales in Cabo San Lucas?

8 A. The last two projects that I've been involved
9 with I spent a significant amount of time with the real
10 estate aspects of the project.

11 Q. In the course of your employment do people
12 discuss the values of different developments down there?

13 A. Always.

14 Q. And was there, in fact, financing through Lehman
15 Brothers on this project?

16 A. There was. And with Lehman Brothers specifically
17 I spent about five months with various entities that they
18 brought -- third-party consultants, et cetera. They
19 brought them to the market. They brought them to our
20 market, Cabo. I spent probably at least three months
21 completely evaluating real estate, real estate values to
22 satisfy their due diligence.

23 Q. What was one of your job duties with respect
24 to -- while you were employed at Diamante Cabo San Lucas
25 with respect to the Lehman employees?

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1 A. When I was initially brought on my description
2 was --

3 Q. Did you ever liaison with the diligence people
4 from Lehman?

5 A. I spent, you know -- I don't know the date that
6 Lehman first came on, but whatever that first date was to
7 the final date, I was there all along.

8 Q. Did you have discussions about the value of the
9 property?

10 A. We had many, many site visits. Actually,
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11 extensive site visits to all other projects that had some
12 similarities to what Diamante's master plan presented, so
13 yes.

14 Q. In the course of your 15 years down there in
15 Cabo, how many properties have you seen?

16 A. How many properties have I seen in Cabo?

17 Q. In Cabo. I am only focusing in Cabo. You're the
18 first guy in this case, believe it or not, that's actually
19 been to Cabo and seen other properties.

20 A. Resort type of destination project in Cabo, it
21 would be fair say to say if it's 20, I've seen all 20. If
22 it's 40, I've seen all 40. I don't know what the number
23 is.

24 Q. Would it be fair or unfair to say that you know
25 the Cabo real estate market not well, fairly well or well?

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1 A. Very well.

2 Q. Why is that?

3 A. I also have a real estate company that does real
4 estate findings and transactions, and I have had that
5 company -- I'm the principal -- sole principal -- for six
6 years.

7 Q. So what would you value the Diamante Cabo San
8 Lucas development as it is presently?

9 A. How I make that comment is based on the other
10 valuations that I've seen, both for the Lehman due
11 diligence and then in the most, let's see -- over the
12 last -- I want to give you a reference to time, but a year
13 ago I believe there was an evaluation done by Bruce
14 Greenberg, and that evaluation came in -- before the world
15 changed as far as valuations were concerned, it was pretty

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16 significant.

17 ARBITRATOR MEYERSON: Hang on.

18 Go ahead.

19 THE WITNESS: So, you know, in speaking with many
20 different investors that have been walking through the
21 doors when I was employed -- I'm no longer employed with
22 Diamante. Since February -- pre-February 2008 we had
23 several different people that were interested in looking at
24 hospitality sites, hotel sites on the frontage. And at
25 that time the valuation allowed me to do a multiple, you

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1 know, what's the property's worth. 250- to 500 million --
2 250 million to 500 million would be -- I know that's a
3 broad range.

4 I think that property speaks to a few different
5 types of persons that would be interested in investing. If
6 it's a hotel group the value would be a lot more because
7 the economics behind the hospitality versus residential
8 applications is different. So if it was a hotel group
9 looking to come in, then the values would be closer to
10 500-.

11 If it was just a developer that wanted to do pure
12 golf and pure residential, maybe it would make more sense
13 at about 250- million. So if I was speaking to someone
14 that was interested in investing, that's exactly how I
15 would say it. They would have to do their own work to
16 determine the validity of that.

17 ARBITRATOR GORDON: How are you valuing it; at
18 which of these types of projects are you placing your
19 value?

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20 THE WITNESS: There's several in the area that
21 give me reference. Is it appropriate for names?

22 MR. RICHARDS: Yes.

23 THE WITNESS: El Dorado, which is a discovery
24 land project. The head of that project is Mike Meldman.
25 Palmilla is a very good reference as far as determining

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1 real estate values.

2 Most recently a project that's been doing very
3 well and continues to do well is Puerto Los Cabos. They've
4 just completed 18 holes of a 36-hole planned development.
5 They've had a lot of success with selling real estate on
6 the beach. We're a little slower than that I'll say, but
7 the beachfront stuff, they've been doing real well.

8 ARBITRATOR GORDON: Is it on the Pacific side or
9 Sea of Cortez side?

10 THE WITNESS: On the Sea of Cortez side.

11 ARBITRATOR GORDON: Is that also the place where
12 Fiesta American is?

13 THE WITNESS: What the heck is that name? That's
14 Cabo del Sol, which is also on the Sea of Cortez, but right
15 in the middle of the tourist corridor.

16 ARBITRATOR GORDON: When you're speaking of this
17 project, is this on the Pacific side?

18 THE WITNESS: It's on the Sea of Cortez. It
19 would be like if we made three references: The project you
20 spoke of, Fiesta Americana is the namesake, and Cabo del
21 Sol, the airport in San Jose. Over here further up the
22 coast, which would be more east up the coast, would be
23 Puerto Los Cabos. It's a 5,000-plus-or-minus acre, master
24 plan community, two golf courses with a mix of residential,

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25 both in fractional, timeshare, hotel and full ownership 954

1 individual family homes.

2 Other references would be there's a few smaller
3 projects: Hacienda, nongolf. It's a 22-acre site right
4 opposite the marina in downtown San Lucas. They're just
5 right now running closing procedures, converting the sales
6 that they had in prebooked stages.

7 So there's a multitude of properties that give us
8 some reference to where those values would sit. That's the
9 reason I'm giving you such a broad range.

10 ARBITRATOR GORDON: Did you say the golf course
11 itself is complete now?

12 THE WITNESS: It is complete.

13 ARBITRATOR GORDON: Is it operative?

14 THE WITNESS: It is operative. It's grassed in.
15 It's got irrigation. One thing would be void, and that
16 would just be esthetics. It's just not been groomed out.
17 But the golf course is playable. It looks fabulous. Very
18 recently there were some photographs taken by a
19 professional photographer. Actually it was less than two
20 months ago. I have those in my computer. They look
21 fabulous. Unfortunately I have not been to the property
22 for about seven months myself, but I have a friend of mine
23 that afforded me all those photos. It looks wonderful. It
24 looks amazing actually.

25 ARBITRATOR GORDON: who is the designer on your 955

1 golf course?

2 THE WITNESS: That golf course that is complete
3 at Diamante is Davis Love, III.

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4 Q. BY MR. RICHARDS: Are you familiar with the
5 credit line agreement that you witnessed between Mr. Kenner
6 and Mr. Jowdy?

7 A. Help me with that question a little bit better,
8 please.

9 MR. RICHARDS: Do you know the exhibit, Counsel?

10 MR. BAKER: 79.

11 Q. BY MR. RICHARDS: Can you turn to 79 in that?

12 A. Yes. I am familiar.

13 Q. Can you turn to the second page? Do you
14 recognize that signature?

15 A. Which one?

16 Q. The one at the top under witnessed.

17 A. Yes.

18 Q. Whose signature is that?

19 A. It's mine.

20 Q. Were you present when Mr. Jowdy signed this
21 credit line agreement -- this agreement, forget the title,
22 with Mr. Kenner?

23 A. Yes, I was.

24 Q. Lastly, do you happen to own any real estate at
25 all with Mr. Kenner in Baja, Cabo San Lucas? Do you own

Ex. 79 was the
2004 Hawaii loan
agreement with
Jowdy...

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1 any property -- do you have a title with him in any
2 property?

3 A. I do not.

4 MR. RICHARDS: I'll pass the witness.

5 ARBITRATOR MEYERSON: Mike.

6 MR. MEEKS: No questions.

7 ARBITRATOR MEYERSON: Can you help him with his
8 slice?